

² Docket No. 19-1532 (issued April 30, 2020).

causally related to factors of his federal employment.³ He noted that he first became aware of his condition on June 4, 2014 and realized its relationship to his federal employment in October 2016. OWCP, by decision dated February 1, 2017, denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection to the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 28, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On April 27, 2017 counsel requested that appellant's request for an oral hearing be converted to a review of the written record. By decision dated June 9, 2017, an OWCP hearing representative affirmed the February 1, 2017 decision, finding that appellant had not submitted any medical evidence to establish his claim.

Subsequently, appellant, through counsel, submitted a January 29, 2018 medical report from Dr. Laura E. Ross, an attending Board-certified orthopedic surgeon.

On May 18, 2018 appellant, through counsel, requested reconsideration of the June 9, 2017 decision and submitted a May 7, 2018 report from Dr. Ross.

By decision dated July 30, 2018, OWCP modified its June 9, 2017 decision to reflect that the denial of appellant's claim was based on the finding that Dr. Ross failed to submit a rationalized opinion explaining how appellant's diagnosed bilateral knee conditions and bilateral total knee arthroplasties were causally related to the accepted employment factors.

On November 1, 2018 appellant, through counsel, requested reconsideration and submitted an October 26, 2018 report from Dr. Ross.

By decision dated January 30, 2019, OWCP denied modification of its July 30, 2018 decision, finding that Dr. Ross' October 26, 2018 report was insufficient to establish causal relationship as it was based on an incomplete and inaccurate medical history.

On July 10, 2019 appellant, through counsel, appealed OWCP's January 30, 2019 decision to the Board. By order dated April 30, 2020,⁴ the Board set aside the January 30, 2019 decision and remanded the case to OWCP to administratively combine the current claim under OWCP File No. xxxxxx343 with appellant's prior claims under OWCP File Nos. xxxxxx212 and xxxxxx749, and following any further development, OWCP was directed to issue a *de novo* decision on the merits of appellant's claim.

³ Appellant has two prior claims involving injuries to his knees. He filed a traumatic injury claim (Form CA-1) for a left knee injury sustained on March 8, 2012 under OWCP File No. xxxxxx283. Appellant filed an occupational disease claim for left hip and knee injuries sustained on June 4, 2014 under OWCP File No. xxxxxx212. He filed an additional traumatic injury claim for a left knee injury sustained on May 16, 2015 under OWCP File No. xxxxxx749, which OWCP accepted for sprain and medial meniscus tear of the left knee.

⁴ *Id.*

On remand, OWCP administratively combined the claims with the present claim assigned OWCP File No. xxxxxx343 serving as the master file.

On remand, OWCP, by decision dated October 20, 2020, denied modification of its prior denial of appellant's occupational disease claim. It found that the Board had remanded the case for a "new reconsideration decision" and that there was no rationalized medical evidence of record sufficient to establish that his diagnosed bilateral knee conditions were causally related to the accepted employment factors. The appeal rights attached to the decision noted that appellant could request either reconsideration before OWCP or review by the Board.

By letter dated October 28, 2020, counsel requested that OWCP issue a *de novo* decision, pursuant to the Board's instructions, instead of a reconsideration decision. He informed OWCP that the appeal rights attached to the October 20, 2020 decision included a request for reconsideration before OWCP or an appeal to the Board, but did not include the right to an oral hearing before a representative of OWCP's Branch of Hearings and Review. Counsel then requested an oral hearing and contended that if a proper decision had been issued by OWCP on October 20, 2020 then his request was timely made. On November 2, 2020 OWCP responded that the October 20, 2020 decision was issued in response to a November 1, 2018 request for reconsideration. On November 9, 2020 counsel informed OWCP that the October 20, 2020 decision was issued in response to the Board's remand order for a *de novo* decision. By letter dated January 20, 2021, he followed up on his November 9, 2020 correspondence requesting a response. In a February 4, 2021 response letter, OWCP referenced the October 20, 2020 decision and noted that it came with appeal rights of reconsideration or appeal to the Board. On February 11, 2021 counsel again requested that OWCP issue a *de novo* decision, as ordered by the Board. OWCP responded by letter dated March 31, 2021, acknowledging that it was directed by the Board's order to issue a *de novo* decision based on its review of new evidence and a combination of appellant's three claims. It also stated that a reconsideration decision carried the same rights as a *de novo* decision.

On appeal, counsel contends that on October 20, 2020 OWCP failed to issue a "*de novo*" decision as instructed by the Board's April 30, 2020 order remanding the case and instead it issued a reconsideration decision on that date, which did not grant rights to a hearing before the Branch of Hearings and Review. He notes that, while on March 31, 2021 OWCP acknowledged that it was ordered by the Board to issue a *de novo* decision, it also found that a reconsideration decision carried the same appeal rights as a *de novo* decision.

The Board finds that appellant is entitled to a hearing, before a representative of OWCP's Branch of Hearings and Review, pursuant to his October 28, 2020 request for a hearing.

Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁵ However, as the Board explained in *L.A.*,⁶ if it remands a case to OWCP for

⁵ 20 C.F.R. § 10.616(a).

⁶ Docket No. 21-0048 (issued July 19, 2021).

a *de novo* decision, the request for hearing is from the *de novo* decision, which carries full appeal rights, including a right to a hearing before an OWCP hearing representative.

Appellant timely filed his hearing request on October 28, 2020, which was less than 30 days after OWCP's October 20, 2020 decision. Therefore, as he filed a valid, timely hearing request, the case must be remanded to OWCP to hold a hearing before a representative of OWCP's Branch of Hearings and Review, to be followed by the issuance of a *de novo* merit decision.⁷

IT IS HEREBY ORDERED THAT the October 20, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 13, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁷ *Id.*